no state regulation involved,—only common law duties. The defendant claimed that it was subject to the control of Congress only, since the shipments were partly or mostly interstate. The court, by Mr. Justice BREWER (MOODY and WHITE, dissenting) held that the state court could enforce the common law duty not to discriminate between shippers in such a case,—"at least until Congress or the Interstate Commerce Commission takes action, although both carriers are engaged in interstate commerce, and three-fifths of the output of the mill is shipped out of the state," and the mere delegation by Congress to the Interstate Commerce Commission of power over interstate commerce" is not equivalent to specific action by Congress in respect to the matter involved which prevents a state from making regulations conducive to the welfare and convenience of its citizens that may indirectly affect commerce." This case reviews the cases upholding state regulations. Compare also *Atlantic C. L. R. Co.* v. *Mazursky* (1910), 216 U. S. 122, 30 Sup. Ct. 378.

In *Mississippi Railroad Commission* v. *Illinois Cent. R. Co.* (1906), 203 U. S. 335, 27 Sup. Ct. 90, after reviewing the cases the court by Mr. Justice PECKHAM, says: "A state railroad commission, under a state statute, may order the stoppage of trains if the company does not otherwise furnish proper and adequate accommodation to a particular locality, and in such cases the order may embrace a through *interstate* train actually running, and compel it to stop at the locality named. In such case, in the absence of Congressional legislation covering the subject, there is no illegal or improper interference with the interstate commerce right"; but if reasonable accommodation is otherwise furnished, a regulation requiring interstate trains to stop would be void. See also *Missouri P. R. Co.* v. *Kans.* (1910), 216 U. S. 262, 30 Sup. Ct. 330.

In view of these decisions, it seems that the case under review ought to have passed upon the point of the negligence of the company, rather than held the statute (which made no absolute requirement as the state court held to furnish cars at all events, without reference to its effect upon interstate commerce) to be an unconstitutional and direct interference with interstate commerce. It seems fair under all the facts of the case to hold, contrary to what the lower court held, that the railroad company, considering its duties to both its state and interstate shippers was not negligent, and therefore not liable for any damages or penalty; and because the question of negligence in such cases of apportioning cars necessarily involves the relative duties to state and interstate shippers, and therefore raises a question under the *federal* law, the federal courts would have jurisdiction to determine whether there had been negligence or not, and if such court found there was negligence in the performance of the common law duty to a *state* shipper, then should not the state law imposing the penalty be upheld? H. L. W.

RULES OF PROCEDURE AND SUBSTANTIVE LAW GOVERNING THE UNITED STATES COURT FOR CHINA.—The difficulties encountered in evolving a body of consistent laws for the government of American citizens in countries where we have extra-territorial jurisdiction, are well illustrated in the cases of *United*

States v. *Englebracht* and *Sexton* v. *United States* which have just been reported from the United States Court for China. It will be remembered that our extra-territorial rights in China are derived from the treaty of Wanghia, negotiated in 1844. In 1860, Congress provided for the exercise of this jurisdiction in China and other countries by investing consuls and ministers appointed to those countries with judicial powers. The act further provided that the law administered in these consular and ministerial courts should be the laws of the United States, so far as they were adapted to the conditions; where such laws were not adapted, or were deficient in any of the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty should be applied; where none of these afforded sufficient and appropriate remedies the respective ministers of the United States in these foreign countries should by decree and regulation supply the need.

In conformity with these regulations the American minister to China in 1864 decreed a set of regulations for the use of consular courts. These regulations, 106 in number, not only determine matters of procedure but contain enactments on a number of subjects of substantive law. With this scant attention, consular courts were allowed to shift for themselves.

It was not until 1906 that Congress again interested itself in judicial matters in Asiatic countries. In that year was enacted the law creating the present United States Court for China. Section four of this act provides that the jurisdiction of the Court should be exercised in conformity with the laws of the United States now in force in reference to American consular courts in China. Section five provides that the procedure shall be in accordance, so far as it is practicable, "with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States."

United States v. *Englebracht* was a criminal action for embezzlement. Defendant filed a plea in bar, relying upon the three years' limitation for the prosecution of offenses contained in Section 1044 of the Revised Statutes. This section was originally enacted in 1794. Section 82 of the ministerial regulations above referred to provided a limitation of six years. The queston before the court was which provision to apply.

In view of the fact that Section 1044 of the Revised Statutes had already provided a limitation for the prosecution of crimes, it was doubtful whether there was such a deficiency in the laws of the United States as called for the exercise of legislative power by the minister to China, and whether, as a consequence, a ministerial regulation was not void. The court held, however, that this question was set at rest by the phraseology of the fifth section of the act of 1906, providing that the procedure of the court should be in accordance "with the existing procedure prescribed for consular courts in China *in accordance with the Revised Statutes of the United States.*" The words in italics were held to be words of description, and not of limitation, and as having the effect of enacting into law all existing regulations, regardless of their original validity.

The confusion of laws confronting the United States Court is still better illustrated in *Sexton* v. *the United States.* The defendant was arrested on a

charge of vagrancy and the question was to what law to apply for a definition of this offense. The United States minister had, in 1907, made a regulation defining vagrancy. The court questions the power of the minister, since the act of 1906, to make such a regulation, but places its decision finally on the ground that the laws already provided a definition of the offense and that there was, therefore, no room for the exercise of ministerial power. The court calls attention to the fact that in finding a law for any particular case, the court may, under section four of the act of 1906, and section 4086 of the Revised Statutes, have recourse to the codes enacted for any territory of the United States, and for the District of Columbia, and finally to state laws—the last by virtue of the act of July 7, 1878, providing for the utilization of state laws in Federal Courts for the punishment of offenses committed within the states in any place over which the national government exercises exclusive jurisdiction, the punishment of which is not provided for by any law of the United States. In the case before it, the court availed itself of the Alaskan code.

It will be seen from the foregoing that the laws governing American citizens in China are indefinite, and that the court has a wide territory from which to select the rules to be applied in cases coming before it. Section five of the act of 1906 further gives the judge of the United States court power to modify the existing rules of procedure. The present judge of the United States court for China is an alumnus of this university. He occupies a unique position and it will be interesting to observe how logical and consistent a system of law he can evolve out of this chaos. He certainly has the good will of every Michigan graduate. G. O.

WHAT IS INTERSTATE COMMERCE?—In the case of *International Text-book Company* v. *Pigg*, Advance Sheets May 1, 1910 (30 Sup. Ct. 481) the Supreme Court of the United States, decided April 4, 1910, that a "corporation engaged in imparting instruction by correspondence, whose business involves the solicitation of students in other states by local agents, who are to collect and forward to the home office the tuition fees, and the systematic intercourse between the corporation and its scholars and agents, wherever situated, and the transportation of the needful books, apparatus, and papers," is engaged in interstate commerce, and a state statute which makes the filing of a statement of the financial condition of such a corporation a prerequisite to the right to do such business in such way in the state and to maintain a suit in the state court upon a contract connected therewith, is an unconstitutional interference with interstate commerce.

Mr. Justice HARLAN delivered the opinion, and Chief Justice FULLER and Mr. Justice MCKENNA dissented. "The executive offices of the company, as well as the teachers and instructors employed by it, reside and exercise their respective functions at Scranton [Pa.]. Its business is conducted by preparing and publishing instruction papers, text-books, and illustrative apparatus for courses of study to be pursued by correspondence, and the forwarding, from time to time, of such publications and apparatus to students. In the